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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.
 INC, individually and on behalf of all)
 others similarly situated,)

Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**

vs.)

DIRECT WEB MARKETING)
 GROUP, LLC; and DOES 1 through)
 10, inclusive,)

Defendant.)

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of DIRECT WEB MARKETING
8 GROUP, LLC (“Defendant”), in negligently, knowingly, and/or willfully
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
10 Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related
11 regulations, specifically the National Do-Not-Call provisions, thereby invading
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a California corporation with its principle place of business also in California, seeks
16 relief on behalf of a Class, which will result in at least one class member belonging
17 to a different state than that of Defendant, an Arizona company. Plaintiff also seeks
18 up to \$1,500.00 in damages for each call in violation of the TCPA, which, when
19 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
20 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
21 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
22 present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Northern
24 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
25 business within the State of California and Plaintiff resides within the County of
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),

1 is a roofing and plumbing business in Emeryville, California and is a “person” as
2 defined by 47 U.S.C. § 153 (39).

3 5. Defendant, DIRECT WEB MARKETING GROUP, LLC
4 (“Defendant”), is an entity in the marketing industry, and is a “person” as defined
5 by 47 U.S.C. § 153 (39).

6 6. The above named Defendant, and its subsidiaries and agents, are
7 collectively referred to as “Defendants.” The true names and capacities of the
8 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
9 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
10 names. Each of the Defendants designated herein as a DOE is legally responsible
11 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
12 Complaint to reflect the true names and capacities of the DOE Defendants when
13 such identities become known.

14 7. Plaintiff is informed and believes that at all relevant times, each and
15 every Defendant was acting; as an agent and/or employee of each of the other
16 Defendants and was acting within the course and scope of said agency and/or
17 employment with the full knowledge and consent of each of the other Defendants.
18 Plaintiff is informed and believes that each of the acts and/or omissions complained
19 of herein was made known to, and ratified by, each of the other Defendants.

20 **FACTUAL ALLEGATIONS**

21 8. Beginning in or around May of 2016 and continuing through October
22 of 2018, Defendant contacted Plaintiff on Plaintiff’s telephone numbers ending in
23 -3803, -1080, -7210, and -0106 in an attempt to solicit Plaintiff to purchase
24 Defendant’s services.

25 9. Defendant used an “automatic telephone dialing system” as defined
26 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

27 10. Defendant contacted or attempted to contact Plaintiff from telephone
28 numbers belonging to Defendant, including without limitation (510) 455-5876,

1 (213) 298-3782, (925) 350-7610, (925) 891-9006.

2 11. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 12. Defendant's calls were placed to telephone number assigned to a
5 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to
6 47 U.S.C. § 227(b)(1).

7 13. During all relevant times, Defendant did not possess Plaintiff's "prior
8 express consent" to receive calls using an automatic telephone dialing system or an
9 artificial or prerecorded voice on its telephones pursuant to 47 U.S.C. §
10 227(b)(1)(A).

11 14. Furthermore, Plaintiff's telephone numbers ending in -3803, -1080, -
12 7510, and -0106 have been on the National Do-Not-Call Registry well over thirty
13 (30) days prior to Defendant's initial calls.

14 15. Defendant placed multiple calls soliciting its business to Plaintiff on
15 its telephones beginning in or around May of 2016 and continued until in or around
16 October of 2018.

17 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
18 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

19 17. Plaintiff received numerous solicitation calls from Defendant within a
20 12-month period.

21 18. Plaintiff is not a customer of Defendant's services and has never
22 provided any personal information, including his telephone number, to Defendant
23 for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's
24 "prior express consent" to receive calls using an automatic telephone dialing
25 system or an artificial or prerecorded voice on his telephone pursuant to 47 U.S.C.
26 § 227(b)(1)(A).

27 19. Despite this, Defendant continued to call Plaintiff in an attempt to
28 solicit its services and in violation of the National Do-Not-Call provisions of the

1 TCPA.

2 20. Upon information and belief, based on Plaintiff's experiences, and at
3 all relevant times, Defendant failed to establish and implement reasonable practices
4 and procedures to effectively prevent telephone solicitations in violation of the
5 regulations prescribed under 47 U.S.C. § 227(c)(5).

6 **CLASS ALLEGATIONS**

7 21. Plaintiff brings this action individually and on behalf of all others
8 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
9 Classes"). The class concerning the ATDS claim for no prior express consent
10 (hereafter "The ATDS Class") is defined as follows:

11 All persons within the United States who received any
12 solicitation/telemarketing telephone calls from
13 Defendant to said person's telephone made through the
14 use of any automatic telephone dialing system or an
15 artificial or prerecorded voice and such person had not
16 previously consented to receiving such calls within the
four years prior to the filing of this Complaint

17 22. The class concerning the National Do-Not-Call violation (hereafter
18 "The DNC Class") is defined as follows:

19 All persons within the United States registered on the
20 National Do-Not-Call Registry for at least 30 days, who
21 had not granted Defendant prior express consent nor had
22 a prior established business relationship, who received
23 more than one call made by or on behalf of Defendant
24 that promoted Defendant's products or services, within
25 any twelve-month period, within four years prior to the
filing of the complaint.

26 23. Plaintiff represents, and is a member of, The ATDS Class, consisting
27 of all persons within the United States who received any solicitation telephone calls
28

1 from Defendant to said person's telephone made through the use of any automatic
2 telephone dialing system or an artificial or prerecorded voice and such person had
3 not previously not provided their telephone number to Defendant within the four
4 years prior to the filing of this Complaint.

5 24. Plaintiff represents, and is a member of, The DNC Class, consisting
6 of all persons within the United States registered on the National Do-Not-Call
7 Registry for at least 30 days, who had not granted Defendant prior express consent
8 nor had a prior established business relationship, who received more than one call
9 made by or on behalf of Defendant that promoted Defendant's products or services,
10 within any twelve-month period, within four years prior to the filing of the
11 complaint.

12 25. Defendant, their employees and agents are excluded from The
13 Classes. Plaintiff does not know the number of members in The Classes, but
14 believes the Classes members number in the thousands, if not more. Thus, this
15 matter should be certified as a Class Action to assist in the expeditious litigation of
16 the matter.

17 26. The Classes are so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Classes
19 members are unknown to Plaintiff at this time and can only be ascertained through
20 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
21 The Classes includes thousands of members. Plaintiff alleges that The Classes
22 members may be ascertained by the records maintained by Defendant.

23 27. Plaintiff and members of The ATDS Class were harmed by the acts of
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
25 and ATDS Class members via their telephones thereby causing Plaintiff and ATDS
26 Class members to incur certain charges for which Plaintiff and ATDS Class
27 members had previously paid by having to retrieve or administer messages left by
28 Defendant during those illegal calls, and invading the privacy of said Plaintiff and

1 ATDS Class members.

2 28. Common questions of fact and law exist as to all members of The
3 ATDS Class which predominate over any questions affecting only individual
4 members of The ATDS Class. These common legal and factual questions, which
5 do not vary between ATDS Class members, and which may be determined without
6 reference to the individual circumstances of any ATDS Class members, include,
7 but are not limited to, the following:

- 8 a. Whether, within the four years prior to the filing of this
9 Complaint, Defendant made any telemarketing/solicitation call
10 (other than a call made for emergency purposes or made with
11 the prior express consent of the called party) to a ATDS Class
12 member using any automatic telephone dialing system or any
13 artificial or prerecorded voice to any telephone number
14 assigned to a telephone service;
- 15 b. Whether Plaintiff and the ATDS Class members were damaged
16 thereby, and the extent of damages for such violation; and
- 17 c. Whether Defendant and their agents should be enjoined from
18 engaging in such conduct in the future.

19 29. As a person that received numerous telemarketing/solicitation calls
20 from Defendant using an automatic telephone dialing system or an artificial or
21 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
22 claims that are typical of The ATDS Class.

23 30. Plaintiff and members of The DNC Class were harmed by the acts of
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
25 and DNC Class members via their telephones for solicitation purposes, thereby
26 invading the privacy of said Plaintiff and the DNC Class members whose telephone
27 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
28 members were damaged thereby.

1 31. Common questions of fact and law exist as to all members of The
2 DNC Class which predominate over any questions affecting only individual
3 members of The DNC Class. These common legal and factual questions, which do
4 not vary between DNC Class members, and which may be determined without
5 reference to the individual circumstances of any DNC Class members, include, but
6 are not limited to, the following:

- 7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant or its agents placed more than one
9 solicitation call to the members of the DNC Class whose
10 telephone numbers were on the National Do-Not-Call Registry
11 and who had not granted prior express consent to Defendant and
12 did not have an established business relationship with
13 Defendant;
- 14 b. Whether Defendant obtained prior express written consent to
15 place solicitation calls to Plaintiff or the DNC Class members'
16 telephones;
- 17 c. Whether Plaintiff and the DNC Class members were damaged
18 thereby, and the extent of damages for such violation; and
- 19 d. Whether Defendant and their agents should be enjoined from
20 engaging in such conduct in the future.

21 32. As a person that received numerous solicitation calls from Defendant
22 within a 12-month period, who had not granted Defendant prior express consent
23 and did not have an established business relationship with Defendant, Plaintiff is
24 asserting claims that are typical of the DNC Class.

25 33. Plaintiff will fairly and adequately protect the interests of the members
26 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
27 class actions.

28 34. A class action is superior to other available methods of fair and

efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

35. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

36. Defendant have acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

37. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-36.

38. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

39. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

40. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-40.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

43. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

44. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

45. Plaintiff repeats and incorporates by reference into this cause of action

1 the allegations set forth above at Paragraphs 1-44.

2 46. The foregoing acts and omissions of Defendant constitute numerous
3 and multiple negligent violations of the TCPA, including but not limited to each
4 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
5 *47 U.S.C. § 227 (c)(5)*.

6 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
7 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
8 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

9 48. Plaintiff and the DNC Class members are also entitled to and seek
10 injunctive relief prohibiting such conduct in the future.

11 **FOURTH CAUSE OF ACTION**

12 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

13 **Act**

14 **47 U.S.C. §227 et seq.**

15 **On Behalf of the DNC Class**

16 49. Plaintiff repeats and incorporates by reference into this cause of action
17 the allegations set forth above at Paragraphs 1-48.

18 50. The foregoing acts and omissions of Defendant constitute numerous
19 and multiple knowing and/or willful violations of the TCPA, including but not
20 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
21 in particular *47 U.S.C. § 227 (c)(5)*.

22 51. As a result of Defendant's knowing and/or willful violations of *47*
23 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of
24 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
25 *§ 227(c)(5)*.

26 52. Plaintiff and the DNC Class members are also entitled to and seek
27 injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act**

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

53. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 21st Day of January, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff